

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pollack/Belz Communication Company, Inc.)	Facility I.D. No. 52907
Licensee of Station KLAX-TV)	NAL/Acct. No.: 20134140061
Alexandria, Louisiana)	FRN: 0006096200
)	File No: BRCDT-20130603BFV

FORFEITURE ORDER

Adopted: December 5, 2014

Released: December 5, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules ("Rules"),¹ we find that Pollack/Belz Communication Company, Inc. (the "Licensee"), licensee of Station KLAX-TV, Alexandria, Louisiana ("KLAX"), willfully and repeatedly violated Section 73.3539(a) of the Rules by failing to timely file with the Commission its Application for Renewal of Broadcast Station License (Form 303-S). Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of two thousand, four hundred dollars (\$2,400).

II. BACKGROUND

2. The Video Division ("Division"), Media Bureau ("Bureau") issued a Notice of Apparent Liability for Forfeiture ("NAL") on February 5, 2014.² The NAL notified the Licensee that it failed to file its license renewal application as required under Section 73.3539(a) of the Rules.³ The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of \$2,400. In a timely Response filed on March 7, 2014,⁴ the Licensee requested that the proposed forfeiture be canceled. The Licensee contended that it did not violate Section 73.3539(a) because its preceding license renewal application remained pending and therefore there was no need to file a new license renewal application.⁵ Furthermore, the Licensee contends that the Commission does not have the authority to levy a forfeiture

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1),(2).

² *Pollack/Belz Communication Company, Inc.*, Notice of Apparent Liability for Forfeiture, DA 14-127 (rel. Feb. 5, 2014) ("KLAX NAL").

³ 47 C.F.R. § 73.3539(a) (requiring a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed....").

⁴ *Pollack/Belz Communication Company, Inc.*, Response to Notice of Apparent Liability (Mar. 7, 2014) ("KLAX Response").

⁵ *Id.* at 2-4. The Commission granted KLAX-TV's pending license renewal applications on October 9, 2014. See File Nos. BRCT-20050201BHM and BRCDT-20130603BFV.

based on violations of a Public Notice and that the guidance provided by the Bureau in a Public Notice to licensees with still pending license renewal applications represented an improper change in policy or practice.⁶

III. DISCUSSION

3. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the applicable statutory provisions and its rules concerning the operation of those stations. Under section 503(b)(1) of The Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁸ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁹

4. In the *NAL*, the Commission proposed a forfeiture amount of \$2,400. The Licensee argues that the proposed forfeiture amount should be cancelled. We have considered all of the Licensee’s arguments and conclude that cancellation of the proposed forfeiture amount is not appropriate. For the reasons set forth in greater detail below, we find that the Licensee is liable for a forfeiture in the amount of \$2,400.

5. First, the Licensee argues that it cannot be held liable for violating a rule requiring it to file a new license renewal application when it does not have a license to renew. It goes on to contend that the filing it made on June 3, 2014 “amounted to a supplement” of its prior license renewal application.¹⁰ The Licensee correctly states that at the time the *NAL* was issued the license renewal application from the previous license renewal cycle remained pending.¹¹ On March 12, 2012, the Media Bureau issued a Public Notice (“*March 2012 PN*”) stating that “a station must file [a new license renewal application (Form 303-S)] even if its last renewal application remains pending.”¹² The *March 2012 PN* was issued as guidance based on the Bureau’s interpretation of the obligations bestowed upon all broadcast television licensees concerning the renewal of their licenses, both under the Rules and the Act.

6. Although Section 307(c)(3) of the Act permits licensees to continue operation while there is a pending license renewal application,¹³ Section 307(c)(1) sets specific limits on the term by which the Commission may grant a broadcast station license. The plain language of Section 307(c)(1) states that:

⁶ *Id.* at 4-6; *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, 27 FCC Rcd 2460 (MB 2012)(“*March 2012 PN*”).

⁷ 47 U.S.C. § 503(b)(1)(A),(B); 47 C.F.R. § 1.80(a)(1),(2).

⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹⁰ KLAX Response at 3; File No. BRCT-20050201BHM.

¹¹ *Id.* at 1-2.

¹² *March 2012 PN*, 27 FCC Rcd at 2461.

¹³ *See* 47 U.S.C. § 307(c)(3).

Each license granted for the operation of a broadcasting station shall be for a term of *not to exceed 8 years*. Upon application therefor, a renewal of such license may be granted from time to time for a term of *not to exceed 8 years from the date of expiration of the preceding license*, if the Commission finds that the public interest, convenience, and necessity would be served thereby.¹⁴

Continued operation of a station by a licensee as a result of a pending license renewal application does not change the stated expiration date of the station's prior license or permit the Commission to grant a new license for a period longer than eight years from that date. Such an interpretation would require more than a change in Commission rules or policy; it would require a change in the language of the Act itself.

7. Here, the date of expiration listed on the preceding license for KLAX was June 1, 2005. If the Commission were to treat KLAX's 2013 license renewal application as a "supplement," as requested by the Licensee, grant of KLAX's 2005 license renewal application would result in the issuance of a license that was scheduled to expire on June 1, 2013. Upon grant of KLAX's 2005 license renewal application, which occurred on October 9, 2014, there would no longer be any license renewal application pending and KLAX's license would be expired. Accordingly, continued operation of KLAX would amount to operation without a valid authorization, a violation of Section 301 of the Act.¹⁵ In order to avoid such a scenario, the Bureau issued its *March 2012 PN* advising stations with a pending license renewal application to file a new license renewal application "covering the period from expiration of the station's last renewal term through the date of filing of the new renewal application."¹⁶

8. The Licensee also argues that Section 73.3539 of the Rules "does not call for the filing of license renewal applications for periods when a license *would* expire if it had been issued, but rather only for renewal of licenses that actually *have* been issued."¹⁷ We note that the language of Section 73.3539(a) begins with the phrase "Unless otherwise directed by the FCC." This language permits the Commission to provide additional guidance or directions regarding the filing instructions provided for by the rule. The Bureau's *March 2012 PN* served as this guidance. Although the Licensee contends that it was never directly "sent" a copy of the *March 2012 PN*,¹⁸ a copy was published in the Daily Digest on March 12, 2012.¹⁹ The Commission's issuance of the Public Notice through the Daily Digest served as constructive notice to all affected licensees,²⁰ and was sufficient to inform the Licensee about the guidance provided by the Bureau regarding the filing of new license renewal applications.

9. Second, the Licensee argues that the Commission does not have authority to levy forfeitures based on violations of Public Notices, especially where they conflict with the plain meaning of the Rules and the Act.²¹ As noted in the *NAL* and this *Forfeiture Order*, the Division did not levy a forfeiture against the Licensee based on its violation of the *March 2012 PN*, but rather its violation of Section

¹⁴ 47 U.S.C. § 307(c)(1) [emphasis added].

¹⁵ 47 U.S.C. § 301.

¹⁶ *March 2012 PN*, 27 FCC Rcd at 2461.

¹⁷ KLAX Response at 3.

¹⁸ *Id.* at 5, fn. 2.

¹⁹ Federal Communications Commission Daily Digest, Vol. 21 No. 48 (rel. Mar. 12, 2012) (accessible at http://transition.fcc.gov/Daily_Releases/Daily_Digest/2012/dd120312.html).

²⁰ See, e.g., *High Country Communications, Memorandum Opinion and Order*, 4 FCC Rcd 6237 (1989).

²¹ KLAX Response at 4-5.

73.3539(a) of the Rules. As discussed herein, the *March 2012 PN* was not in conflict with the Rules, but was guidance provided to help licensees comply with the Rules and the Act.²²

10. Finally, the Licensee contends that the *March 2012 PN* represents a change in policy or practice without any justification and that under the Administrative Procedure Act (“APA”), such a change “cannot be enforced against a licensee such as PBC.”²³ The Response notes that “years ago” when license terms were only three years in length and the processing of renewal applications was delayed the Commission did not require the filing of a second license renewal application, but would invite licensees to file supplements to their renewal applications.”²⁴ Not only does the Licensee fail to provide any support for these claims, but we find this argument does not take into account changes in the text of Section 307 of the Act over time. Prior to 1996, Section 307 of the Act did not tie the term of a license renewal to the expiration date of the prior license.²⁵ Therefore, a “supplement” was a legally permissible alternative to requiring licensees to file a new renewal application. However, following adoption of the Telecommunications Act of 1996, Section 307 was amended in a manner that linked the term of a license renewal to not more than “8 years from the date of expiration of the preceding license.”²⁶ Accordingly, the guidance provided in the *March 2012 PN* was not a change in policy or practice that requires justification or implicates the APA, but was direction provided to licensees with still pending license renewal applications taking into account the plain language of Section 307 of the Act and the Rules.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1),(2) of the Commission’s rules,²⁷ Pollack/Belz Communication Company SHALL FORFEIT to the United States the sum of Two Thousand, Four Hundred Dollars (\$2,400) for its violation of Section 73.3539(a) of the Commission’s Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80(h) of the Commission’s rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Evan Morris at evan.morris@fcc.gov on the date payment is made.

²² See *supra*, paras. 6-7.

²³ KLAX Response at 5.

²⁴ *Id.* at 2.

²⁵ See *Communications Act of 1934*, PL 73-416, § 307, 48 Stat. 1083, 1084 (1934) (“Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses). The provision of the Act went through numerous amendments following its adoption in 1934, but none of the amendments modified the statutory language in a manner that would tie the license term on renewal to the expiration date of the prior license. See e.g., *Communications Act Amendments of 1952*, PL 82-554, § 5, 66 Stat. 711, 714 (1952); *Communications Act Amendments of 1960*, PL 86-752, § 3, 74 Stat. 889 (1960); *Omnibus Budget Reconciliation Act of 1981*, PL 97-35, § 1241(a), 95 Stat. 357, 736 (1981); *Communications Amendments Act of 1982*, PL 97-259, §§ 112, 113(a), 96 Stat. 1087, 1093 (1982).

²⁶ *Telecommunications Act of 1996*, PL 104-104, § 203, 110 Stat 56 (1996)(codified at 47 U.S.C. § 307(c)(1)).

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1),(2).

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. **IT IS FURTHER ORDERED THAT** copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Pollack/Belz Communication Company, Inc., 5500 Poplar Avenue, Suite 1, Memphis, TN, 38119, and to its counsel, Barry D. Wood, Wood, Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201-4400.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau